SPEECH

OF

MR. M'CLERNAND, OF ILLINOIS.

In the House of Representatives, March 19, 1844—On the resolution reported by the Select Committee on the Rhode Island controversy, asking the House to authorize the committee to send for persons and papers.

Mr. McCLERNAND proceeded to say:

Mr. SPEAKER: I would not have desired to address the House on the subject under consideration, but for the fact that, as a member of the committee reporting the resolution upon which this debate has arisen, I took an humble part in bringing it forward, and hence am in some degree responsible for the measure. This circumstance alone, I confess, would hardly justify me in claiming the attention of the House to the exclusion of others more competent to do the subject justice; but when in this connexion it is remembered that the report of the committee and its friends have been assailed and denounced, without cause, without provication, for doing what they could not omit without culpability, I trust I shall stand excused, if not justified, in so doing.

Our opponents have thrown down the gauntlet; we fear not to take it up. We would regret to see the question made political; but if it must be so, then let the conflict come—our motto shall be

"Lay on, Macduff,
"And damned be he who first cries hold! enough!"

But waiving this aspect of the question for the present, I will proceed to the discussion of its true merits.

Objection has been made by the gentleman from Tennessee, [Mr. CAVE JOHNSON,] who I am sure cannot be opposed to the object of the resolution, that it is improper to authorize committees of the House to send for persons and papers; and this objection has been repeated by others hostile to the resolution. But, sir, is it well founded? It is not. I find the same power was granted in numerous instances during the 27th Congress, and in one instance upon the application of the gentleman from Tennessee himself. If, therefore, it be refused now, the effect will be to make this a case of peculiar merit, an exception to the general rule. I hope this will not be done: if, however, it shall be, then discharge the committee from the further consideration of the subject; for without the power, it would be worse than useless to spend time upon it.

The question pending covers a broad field of inquiry. It involves numerous facts, as well as grave and important principles. It grasps not only the fundamental principles of civil government, but also those great and inestimable rights which constitute the title to man's divinity—which verify the fact of his creation in the image of his God. In discussing it, we are met at the threshold with the objection that the House has no jurisdiction of the subject-matter. To determine the validity of this objection, it is necessary that reference should be had to the memorial which forms the basis of the proposed investigation. The memorial is signed by twenty-six members of the legislature of the State of Rhode Island; and, among other things, charges that in 1841, "previously to the election of a government under the people's constitution, the President of the United States issued a letter to the governor then acting under the *charter* laws, in which he undertakes to *prescribe* the mode of proceeding to amend the institutions of a State, and declares, in effect, that the only valid change must be made by the *authorities* and the people—placing the authorities *before* the people."

It also charges that he "conveyed the threat of an intervention with the forces of the United States, in case the proceedings of the *people* to set up *their* government should be persisted in;" and that "they believe and affirm that this interference of the President in the affairs of a State, small in territory, easy of access, with an imperfect military organization, and incapable of itself of resisting a powerful attack from abroad, had the effect of *overawing* the people, and of *strengthening* the adverse party; and that it mainly caused the *overthrow* of the people's constitution and government."

Now, Mr. Speaker, the President is not only politically amenable to the people for the faithful administration of his office, but he is also liable to impeachment by this House; and upon conviction by the Senate of certain crimes, must be removed from office. The charges here alleged against him are of the most serious and flagitious character. If they be true—which I do not pretend to insinuate or assert, for I know not—he is not guilty of treason against the government, to be sure; but he is guilty of treason against the *rights* and *majesty* of man. He stands in defiance of the laws of nature as they regard man; and in assuming to himself the right to interfere by force in the internal affairs of a State, has announced a principle, the practical operation of which would be to strike down the sovereignty and independence of the States, and to clothe the executive with the absolute and unlimited powers of a military dictator. His discretion would become the source of the people's rights, reversing the relation of principal and agent, and of master and servant, as proclaimed by the declaration of independence, and confirmed by our constitutions and bills of rights. Gentlemen who have preceded me on the other side, claim for the President the power to employ the military force of the country to suppress *insurrection* and *domestic violence* in a State, and under this power seek to justify his alleged interference to suppress the constitution established by a majority of the people of Rhode Island. The answer to this is, that even if he possessed the power, yet it would not extend to the present case. The will of the majority, according to the republican principle, whether in establishing or administering government, is the soverign and supreme power of a State. The will of a majority in Rhode Island had been expressed in favor of a new constitution of government; and hence, if the President interfered in favor of a minority to suppress the constitution, he exercised *not* his constitutional power to *suppress* insurrection and violence in a State, but in effect to aid and abet them.

The constitutional provision requiring the United States to protect each State against domestic vio-

lanee, never meant that the President was authorized to interfere in a question of civil liberty in favor of a *minority government* against a *majority sovereignty*. Its object is to secure obedience to the laws of a government deriving its authority from the *consent of the people*, and at least of a *majority* of the people.

The error of the President, if he interfered at all, was in setting the *civil authorities* of the State above the *people*, who are the source of all civil authority, and who may, at their pleasure, *make* and *unmake* their civil institutions.

It is proper, therefore, that the inquiry should be made, whether the President has intefered, as charged in the memorial, in the domestic affairs of a State. A sacred regard for the constitution, and the inalienable rights of the people, require it; and, to enable this to be done, the committee must be authorized to send for persons and papers.

The gentleman from Rhode Island [Mr. CRANSTON] has denounced the memorial "as infamous and false in every word." It would be more becoming that some gentleman representing the people of that devoted State should undertake to defend the authors of the memorial, and those for whom they speak, against so gross and injurious an imputation; but none has done so. It is, perhaps, because the fatal blow which prostrated their rights at home has left them without a voice upon this floor. If so, although a stranger to the people of Rhode Island, I hope I may be permitted to perform the duty myself. The memorial, speaking of the grievances of the people of the State, sets forth that a constitution was ordained by the people, which was suppressed by force; that a riot act was enacted by the charter legislature, which prohibited the people from "assembling to ask redress of their grievances;" that martial law was enforced, by which the *chartists* were authorized to enter private dwellings, and to arrest the citizen upon suspicion, as was done in many instances. It alleges these and many other grievances, too numerous here to mention.

From an examination of the history of the difficulties in Rhode Island, I find all these charges to be true, painfully true, notwithstanding the broad and unqualified denial of the representative from that State, [Mr. CRANSTON.] The chartists of that State, by an act approved in March, 1842, intended to suppress the "people's constitution," by preventing an organization of government under it, prohibited all elections under it, and subjected all persons acting as judges or clerks of election under it, to *indictment*, and to "fine not exceeding *one thousand* dollars, nor less than *five hundred* dollars, and to *imprisonment* for the term of *six months;*" and all persons who should signify their willingness to accept office, or permit their names to be used as candidates for office under the "people's constitution," to punishment by indictment in a fine of two thousand dollars, and to imprisonment for the term of one year." And all persons who, under such elections, should assume to exercise any of the executive, legislative, or judicial offices of the government, to "*imprisonment for life*," as being guilty of the crime of "treason against the State." Under this law Martin Luther, —a name now endeared to civil as well as religious liberty—was indicted by the charter authorities for acting as judge of an election; and upon arraignment and trial before a *chartist court* and *jury*, was convicted of the offence.

The following are the proceedings of the court upon the *verdict* of the jury:

Chief Justice Durfee. Does the defendant ask for any delay?

Mr. Luthur. No. I have no wish for delay; this time is as good as any.

Chief Justice Durfee. Sentence shall be immediately drawn up.

Chief Justice. We impose upon the defendant the least punishment the law will admit. If he would have any mitigation of the sentence, he must go to the general assembly, taking the recommendation of the jury with him.

The sentence was then read by the clerk:

That the said Martin Luther pay the State a fine of $500, and be imprisoned for the term of six months.

Mr. Luther was then taken taken to the *Bristol jail*, conformably to his *sentence*.

And thus a man seeking, without pay or emolument, to secure the rights of the people, has fallen a martyr to liberty. The memory of Martin Luther will be venerated and respected by posterity when the names of his oppressors shall be remembered only to be loathed and execrated.

Thomas W. Dorr, late Governor of the State of Rhode Island under the people's constitution, after having been driven from the State for some two years, now stands indicted for treason under the same bloody act, for *assuming to exercise* the office of governor under the "people's constitution." For months past he has been confined in a loathsome and offensive prison. Lately he was brought before the same court at Newport, and notwithstanding his offer to waive his right of pleading to the jurisdiction of the court, that he might obtain a speedy trial, a trial was denied him; and he was remanded to prison, there to remain until the court can find it *convenient* to give him a trial. I know, sir, it has been stated by the *other* gentleman from Rhode Island, [Mr. POTTER,] that Mr. Dorr's trial was postponed, because, fearing to go to trial, he interposed what the gentleman has chosen to denominate a dilatory plea. But, sir, if he did plead to the jurisdiction of the court, it was his right to do so; and it is both ungenerous and unjust to torture such a circumstance into an imputation. Tyranny, when whetted by revenge, is as heartless as it is terrible; as we have abundant proof on this floor. The fact is, that the accused, both by himself and his counsel, sought an immediate trial, which, the poor privilege of being convicted at once, was denied him. The offence of Mr. Dorr was, that he was bold enough to reiterate the sentiments contained in the declaration of independence, " that all men are created free and equal; that they are endowed by the Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness; that, to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that, whenever any form of government becomes destructive of these ends, it is the *right* of the people to *alter* or abolish *them*." In a word, the treason with which Mr. Dorr stands charged is, that he was the *friend of liberty*, and the *enemy of despotism*. For this offence he is denounced and decried here and elsewhere throughout the country, by the members of a certain party. For it, he has been banished from his fireside and his friends, from the land of his nativity, and the home of his fathers. For it, he has been shackled as a felon, and imprisoned among felons. And for it, he is to be branded with the crime of treason, and is to be doomed to the gloomy walls of the prison, there to linger out in pain and misery the remnant of a noble life. "O! shame, where is thy blush?" The God

of the universe, who has created man in his own image, and for his own glory, who has proclaimed him a moral agent free to think and to act, will vindicate his high purposes, and overtake the puny rebels against his authority with a retribution which shall be just and exemplary. Russell, and Hampden, and Sydney, fell the victims of tyranny and the martyrs of liberty; but their lives have been expiated by toppling thrones and the smoking blood of kings. Their noble virtues yet live green in the memories of men, and will continue to do so as long as virtue and liberty shall find a place in the bosoms of men.

Algernon Sydney was beheaded because he said that tyrants ought to be deposed—as in the cases of Nero and Caligula—and because he published the bold treason, "that all civil authority is derived from the people." Dorr is to be branded with treason and to be consigned to perpetual imprisonment because he has published the bold heresy that "the people are sovereign, and may change their civil institutions by the same right they create them." The learned doctors of the University of Oxford declared, on the day Sydney was beheaded, every principle by which a free constitution can be maintained to be "*impious and heretical*," especially the doctrine that "all civil authority is derived from the people." And while Dorr is now being exhibited as a spectacle in the felon's box in the *high court* of Rhode Island upon a similar charge of treason, the learned doctors of the federal school on this floor are denouncing the right of the people to self-government as "*lawless, criminal, revolutionary*, and *agrarian*, and him as a "*conspirator and robber*." The cases are analogous; the only difference is, that the theatre of one tragedy was in England—in a monarchy, when liberty, in her infancy, was making her first throes to sunder the bonds of despotism; the other in a republic, based on the will of the people, whose proudest boast is that liberty, under its auspices, flourishes in the strength and vigor of manhood. But, sir, actual military force was employed to suppress the people's government. The chartists, it appears from their pay-roll, had a force of four thousand men in the field, armed and equipped, and amply provided with artillery. This force was in the pay of the charter government, and consisted of whites and negroes; and, countenanced by the presence of a considerable detachment of the United States troops which had been concentrated in the State from several posts, were enabled to override and trample down the authorities of the people. In the account of their proceedings, I find the following to be one of the evidences of their domination:

Orders No. 54. Headquarters, &c., June 28, 1842. The village of Chepachet and *post* of the *insurgents* were *stormed* at a quarter before 8 o'clock in the morning, and taken, with about *one hundred prisoners*.

The charge, therefore, that the people's government was suppressed by force, is made good. It is equally true, as charged in the memorial, that a riot act was resorted to, to carry forward their unholy crusade against the rights of the people. This act (a refinement upon British tyranny in the most gloomy days of that monarchy, and worthy only of a place upon the bloody code of Draco) prohibited the people from peaceably assembling to consult with a view to the common good, upon the penalty of being shot down as beasts of prey. A chartist magistrate had only to order the people to disperse, to justify him in causing them to be slaughtered; no respite was allowed—no time for compliance on the part of the people.

So, also, with regard to the charge of martial law. It is a well-known fact, that the law of arms, inexorably enforced, was the supreme law of the State. The military was placed above the civil authorities; and under the triumph of this grim and terrible despotism, the blood of unoffending McKelby was shed, the citizens of other States were kidnapped, private dwellings were forced, females insulted, the public arsenals turned against the people, and the people themselves, on one occasion, to the number of some two hundred, captured, shackled, and exhibited through the public streets, and some of them thrown into prison, there to remain for months.

Martial law—which is the substitution of force for civil authority; which is, in fact, the abrogation of all law—reigned supreme; and these were the practical illustrations of the beautiful theories of the "law and order party" of Rhode Island. God save the mark!

But, sir, passing on, what are the matters in dispute between the democrats and chartists of Rhode Island? It becomes necessary to make this inquiry, in order that we may judge correctly of the merits and demerits of the contending parties—that we may be enabled to do them justice.

I find, sir, from an examination of the subject, that the cause of the controversy was a desire, followed up by an effort, on the part of the democracy, to supersede the charter government of Rhode Island by one framed conformably to the republican standard prescribed by the federal constitution; and a corresponding desire and effort, on the part of the chartists, to retain the charter government—in a word, an antagonism on the form and character of government. The history of the controversy may be briefly stated as follows:

In 1663, Charles II, King of England, granted the charter under which the late government of Rhode Island was organized. He granted it, according to its terms, to certain of his "trusty and well-beloved subjects;" and, for the purpose of imparting life and motion to the corporation, appointed, of his "royal will," Benedict Arnold governor of the corporation; also, a lieutenant governor, and ten assistants, who, together with a specified number of persons to be chosen periodically by the freemen of the company, were charged with the management of its business; for it was nothing more than a mere landed corporation.

[Here Mr. CRANSTON asked what Benedict Arnold was referred to. Mr. McC. said, not the one of revolutionary memory.]

The right of suffrage is restricted by the charter to such persons as the company, by their constituted authorities, shall admit to be members and *freemen* of the company. None others, although required to pay taxes, and to do military duty, are permitted the right. This restriction of suffrage, together with the increase of population, had so widened the disproportion of the freemen, and non-freemen, according to the classification of the people, that, in 1841, the general assembly was elected and controlled by a number of towns containing less than one-third of the population of the State. In some instances, the inequality was extreme; as, for example, the town of Portsmouth, with 1,700 inhabitants, elected the same number of representatives as the city of Providence with 23,172 inhabitants. Three agricultural towns whose united population amounted to but 1,805, elected the same number of representatives as three other agricultural towns whose population amounted to 18,848. This inequality of represent-

ation and unjust and degrading restriction of suffrage, had been a cause of dissatisfaction and complaint for near forty years before open collision took place between the two parties. In 1811, a bill to extend the right of suffrage to all who paid taxes, or performed military duty, was passed by a democratic Senate, but was lost in a chartist House of Representatives.

In 1829–'34–'40, and '41, the people in various ways repeated their appeals to the charter authorities in favor of the extension of the right of suffrage and a free constitution, but in vain. Their supplications were not heard, but were treated with contempt. Despairing of all hope of obtaining justice at the hands of their oppressors, they finally elected a convention to do themselves what otherwise could not be done. In October, 1841, this convention met, and after making some progress in their business, adjourned to meet again in November after, when they finished their labors, and submitted the draft of a constitution to the people for their adoption or rejection. The vote of the people was accordingly taken upon it; and on the 12th of January after, the convention again met, when they proceeeed to count the votes for and against the proposed constitution, the count showed the whole number of votes given in by American male citizens of full age, and permanent residence or home in the State, in favor of the adoption of this constitution, to be 13,944, being a majority of the whole number of American male citizens of full age and permanent residence or home in the State, of 4,746. They also declared that, of the whole number of voters, (13,944,) 4,960 were legally qualified freemen. Upon this result, the convention proclaimed this constitution to be the paramount law of the State, and recommended the early nomination of officers under it.

They also communicated the above result, together with a copy of the people's constitution, to the Governor of the State; which, upon being laid before the general assembly, was rejected by a large majority.

The people having thus framed for themselves a constitution, proceeded next to organize a government under it. For this purpose, they held a State convention at Providence in February, 1842, and nominated general, district, and county officers, for election on Monday, the 18th day of April, 1842. The election took place, and a practical operative government was organized, with Thomas W. Dorr at the head as Governor of the State.

It is a fact to be observed in this connection, that the people's constitution was not only adopted by a majority of the whole voting population of the State, but also by a majority of those qualified to vote under the charter government.

The majority of these, calculated upon the basis of the vote in the presidential election of 1840, which was the largest ever polled in the State, was 1,298.

Whilst these events were transpiring on the part of the people, the chartists, seeing that the force of public opinion was about to bear them down, resorted to a new device to avert their overthrow. After having previously proposed a constitution themselves, for the adoption of a limited number of the people, they removed several of the restrictions imposed in connexion with its adoption, and finally, at an adjourned convention in February, 1842, upon a more enlarged basis of suffrage, submitted their constitution to those authorized to *vote under* it, to be voted for in March after—which was voted down; and in September after, in pursuance of the call of the charter legislature, and under the constraint of martial law, held another convention to frame another constitution; the vote in favor of which, as appears by the election in November after, was 7,024—being 52 votes less than one-half of the number polled for the "people's constitution," and about one-third of the voting population of the State—the residue refusing, under the circumstances, to vote at all.

The existing government of Rhode Island is the same which was organized under this constitution. It is a government founded in *usurpation*, and supported by *force;* and although, in some respects, more liberal than the old charter government, is yet liable to many strong objections. It is objectionable, among other things, because it regards the elective franchise as an *incident* of *property*, and not the *right* of *man*—because it sets the landholder over the chattel holder, and both these over the *naturalized* citizen.

Thus, sir, I have given a brief history of the Rhode Island controversy. I have done so, because, as I have before said, it is necessary to a just appreciation of the merits of the controversy; because it is necessary to disabuse the public mind with regard to the foul and premeditated charges which have been made against the democracy of that State. It brings to view the principal events of a continuous struggle, for a period of forty years, to ameliorate the condition of the masses, exhibiting on one side the grinding tenacity of power, and on the other the Christian sympathies of liberty; and finally, when further forbearance on the part of the people became criminal, the painful tragedy of the triumph of *might* over *right*, and the *few* over the *many*, and this, too, in a country of boasted liberty and free institutions.

All that remains to mitigate the enormity of the whole transaction, is the reflection that tyranny, though triumphant in violence, was yet constrained to yield something to human rights, under the new constitution, by the force of public opinion. Force might overcome force, but it could not entirely overcome truth.

The *facts* being stated, I pass on to consider the *principles* involved. And here I must say, that I have been more than surprised by the very extraordinary and anti-republican doctrines advanced by the gentleman from Indiana [Mr. Caleb Smith.] He denies to a majority of the people in Rhode Island the right to change their government. He certainly does not mean that a minority possesses the right, and yet, if neither a majority nor minority possesses the right, there is no power anywhere to change it, unless it be by the universal consent of the whole people; which, in the nature of things, never could be obtained.

The doctrine advanced, therefore, is a virtual denial of all power in the people to change their form of government, however vicious and oppressive it might be. Principles so despotic, I am sure, will find no favor in a country, the institutions of which are based on the consent of the people, and the governing power of majorities. It may find favor among the advocates of arbitrary and irresponsible governments: it may serve to vindicate the despotic theories of "divine right," and that "kings can do no wrong;" but certainly, I repeat, it will be scouted in a government of the people.

But let us examine the consistency of the gentle-

man's argument. He denies the right of the majority to change their form of government; but in doing so, he asserts the right of a minority to govern the majority. For example, in the present case, by denying the right to a majority to change the government, he asserts the right of a minority to govern the majority under the established institutions. Nay, more. He not only subjects the majority to the control of the minority, but he asserts the right of one man to control all the balance of the people of the State, by giving him an absolute *negative* upon any proposition to change the government. The gentleman's argument is like the Yankee's gun, which killed at both ends. For the purpose of strengthening his position, he says: "If you concede the right claimed to a majority, there can be no stability in government; it will be subjected to all the changes of opinions and parties." As regards this objection, it may be answered that all authentic governments are the reflection—the imbodiment—of public opinion. The will of the people constitutes its moral power and effective force; and it is not a government of the people, if it is independent of the opinions of the people. I would have it subject to the influence of the opinions of the people—liable to be changed or abolished as the people might will it; and this, too, upon the principle that "the people are capable of self-government," and are the best and only proper judges of the form of government most conducive to their interests.

Jefferson says:

> It is not only the *right*, but the *duty* of those now on the stage of action, to change the laws and institutions of government, to keep pace with the progress of knowledge, the light of science, and the amelioration of the condition of society. Nothing is to be considered unchangeable but the inherent and inalienable rights of man.

And above all, it is laid down in the declaration of independence that—

> All experience has shown that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed.

Again: it is objected, on the majority principle, that whenever a majority of the people of a county choose to withdraw from the general compact, and establish a government for themselves, they might do so. This by no means follows.

Justice Story, in his commentaries on the constittution, says, "that no right *exists* or is *supposed* to exist on the part of any town or county, or any organized body within the State, short of the whole people of the State, (meaning a majority of the people, as I will show hereafter by further quotations from the same source,) to alter, suspend, resist, or disown the operations of (that) *its* constitution, or to withdraw themselves from its jurisdiction." Again, he says: "it is certain that a right of the minority to withdraw from a government and to overthrow its powers has no foundation in just reasoning."—Story's Commentaries, volume 1, pages 303, 305, 306. These authorities will be sufficient to put this point at rest. But the gentleman from Indiana, in his eagerness to find fault with the democracy of Rhode of Island, does not seem to know that the chartists, his political friends in that State, have not left him a leg to stand on in the argument he has made. As before observed, he has denied the right of a majority (and, if I understood him, any number less than all) of the people of that State to change the old government; yet it is a fact that less than a majority have changed it. So here we have *fact* against *theory;* and it is said *theory* yields to *fact*. In justifying, therefore, the conduct of the chartists, he overthrows his own argument. He is equally unfortunate in denouncing the democracy of Rhode Island as jacobins and agrarians; for if it is jacobinical and agrarian for a majority to establish a government to their own liking, it is no less so for a minority to do the same thing.

The last refuge of the friends of the chartists on this floor is verified in the resolutions adopted by the charter legislature at its January session in 1842, rejecting the people's constitution, the preamble of which reads as follows:

> Whereas a portion of the people of this State, without the forms of law, have undertaken to form and establish a constitution of government for the people of this State, and have declared such constitution to he the supreme law, and have communicated such constitution unto this general assemhly; and whereas many of the good people of this State are in danger of being misled by these informal proceedings; therefore, &c.

The plain English of which is this; that it was not competent for the people of Rhode Island to change their government without the *consent* of the *legislature* or the *authority* of *law*. This objection implies the *sovereignty* of *government* and the *subordination* of the people; for if the people were sovereign, there would be no necessity to obtain the consent of government, before they would be allowed to change it. This political heresy, fit only for the meridian of despotism, I propose to examine and expose.

Mr. Burke, in his celebrated attack upon the French revolution, advanced the same doctrine; and it is perhaps from him that gentlemen in the opposition have borrowed the idea of the *sovereignty* and *immutability* of government, as, in imitation of him, they have also attacked the democratic principle of that revolution.

Mr. Burke denied *the right* of the people of England "to frame a government for themselves," and insisted "that they would resist the practical assertion of the right with their lives and fortunes;" which means that the people would sacrifice both life and fortune, *not* to maintain their rights, but to maintain they have no rights.

To establish this paradox, he quotes an act of the British Parliament, by which "the Lords spiritual and temporal and Commons, in the *name* of the people &c., most *humbly* and *faithfully submit* themselves, their *heirs* and *posterity* for *ever*" to the reigning sovereigns William and Mary, "and their *heirs* and *posterity*." Upon this foundation he contends that the government is above the people, and cannot be changed or modified by them. As monstrous and absurd as this doctrine is, yet it falls short of the enormity of the doctrine here set up. Mr. Burke admitted that, prior to the passage of this act, the people of England were competent to the control of the government; but here it is contended, in the absence of any such act by the charter legislature, that the people are not competent to the same thing. So it appears that the American advocates of British monarchy outvie its own parasites—they out-Herod Herod. Without the reason, they would imitate the example of what they denominate "the most stupendous fabric of human wisdom the world has ever produced." All of these false theories (the cunning devices of despotism) are happily exploded in this country. Governments either arise *out* of the people, or *over* the people; the first are founded in *right*, the other in *might*. As the people are competent to *make* the first, upon the principles of reason and natural law, they are equally competent to *unmake* them. By

consent they are *brought* into existence, and by consent they are *taken out* of existence. The power of the government consists in the will of the people; without that will it has no power, and consequently ceases to be a *government;* and so with regard to the constitution of government, which, coming from the people, may be abolished by them.

As to the latter description of governments, those which are established by *force* being *wrongful* in their inception, time cannot give them validity; nor are the people bound, either by propriety or duty, to obey them contrary to their will. It would be strange, indeed, to say that a people should go to a government founded in the *usurpation* of their rights, to ask it to secure those *rights.* The idea involves a contradiction. Then, whether the government of Rhode Island was a *rightful* or *wrongful* government, so to speak, it was neither *sovereign*, nor were the people dependent upon its consent to enable them to abolish it.

Justice Iredell, of the Supreme Court of the United States, in speaking of the difference between the principles of the European governments and those of our own, 3d vol. Elliot's Debates, says:

> Our government is founded on much nobler principles. The people are known with certainty to have originated it themselves. Those in power are their servants and agents; and the *people, without their consent,* may remodel the government whenever they think proper, not merely because it is oppressively exercised, but *because they think another form is more conducive to their welfare."—Story's Commentaries, vol. 1, p.* 326.

James Wilson, a member of the federal convention of 1787, and justice of the Supreme Court of the United States, in his published writings, says:

> The people may change the constitution *whenever* and *however* they please. This is a right of which no positive institution can deprive them.
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> These important truths, sir, are far from being merely speculative. We at this moment speak and deliberate under their immediate and benign influence. To the operation of these truths, we are to ascribe the scene, hitherto unparalleled, which America now exhibits to the world—a gentle, a peaceful, a voluntary, and a deliberate transition from one constitution of government to another—from the confederation to the constitution of the United States.—*Wilson's Works, vol.* 3, *p.* 293.

Mr. Paine, in his Essay on the Rights of Man, p. 184, says:

> Government has no right to make itself a *party* in any debate respecting the *principles or modes* of forming or of *changing* constitutions. It is not for the benefit of those who exercise the powers of government, that constitutions and the governments issuing from them are established. In all those matters, the *right* of judging and acting are in those who *pay*, and *not* those who *receive.*

Again, he says:

> A constitution is the *property* of a *nation*, and *not* of those who exercise the government.

Again, p. 185, he says:

> The laws which are enacted by governments, control men only as individuals; but the nation, through its constitution, controls the whole government, and has a natural ability so to. The *final controlling power*, therefore, and the *original constituting* power, are one and the same power.

Mr. Lock, in his work "on civil government," page 317, says:

> The *community* perpetually *retains a supreme power* of saving themselves from the attempts and designs of any body, even of their *legislators*, whenever they shall be so *foolish* or so *wicked* as to lay and carry out designs against the *liberties* and *properties* of the subject; for no man, or society of men, having a power to deliver up their *preservation*, or, consequently, the means of it, to the absolute will and arbitrary dominion of another, whenever any one shall go about to bring them into such a slavish condition, they will always have a right to *preserve* what they have not a power to part with, &c.

This was the condition of the mass in Rhode Island. They were *taxed*, and yet were not allowed to *vote.* They were *enslaved*, because they were *governed without*, and even *against*, their *consent.* The *burdens* of government were their *lot;* its honors and rewards the *franchises* of the favored *few.* If they had forborne longer, under their accumulated wrongs, to strike for liberty, they would have less deserved it.

It is said, however that forms must be observed—as if right consisted in forms, and not in substance! —and, upon this principle, it is contended that, if a particular mode be prescribed by the constitution of a State for changing or amending the constitution, it *must* be followed. Unluckily for those who hold this opinion, it happens that no mode was prescribed by the fundamental law of Rhode Island for that purpose: so, therefore, the argument makes no more for them than against them. But, sir, even if there had been, I deny the authority of the argument. The fact that the people, in framing a constitution, have prescribed a stated mode for changing it, does not debar them from adopting another, in their discretion; for, as sovereignty is absolute and illimitable, they may, in the exercise of the same sovereignty by which they adopted one mode, adopt another.

Mr. Madison, speaking of the alleged defect of the powers the convention of 1787, which framed the federal constitution, says:

> They (the members of the convention) must have reflected that, in all great changes of established governments, forms ought to give way to substance; that a rigid adherence in such cases to the former, would render nominal and nugatory the transcendent and precious right of the people to abolish or alter this goverument, as to them shall seem most likely to effect their safety and happiness, since it is impossible for the people spontaneously and universally to move in concert towards their object; and it is therefore essential that such changes be instituted by some *informal* and *unauthorized propositions*, made by some patriotic and respectable citizen or number of citizens. They must have recollected that it was by this irregular and assumed privilege of proposing to the people plans for their safety and happiness, that the States were first united against the danger, with which they were threatened by their ancient government; that committees and congresses were formed for concentrating their efforts, and defending their rights, and that conventions were elected in the several States for establishing the constitutions under which they are now governed. Nor could it have been forgotten that no little ill-timed scruples, no zeal for adhering to ordinary forms, were anywhere seen, except in those who wished to indulge, under these masks, their secret enmity to the substance contended for.—*Federalist, No.* 40.

James Wilson, before cited, says:

> Permit me to mention one great principle, the vital principle I may well call it, which diffuses animation and vigor through all the others. The principle I mean is this—that the supreme or sovereign power of the society resides in the citizens at large; and that, therefore, they always retain the right of abolishing, altering, or amending this constitution, at whatever time, and in whatever manner, they shall deem it expedient. Vol. 1, p. 17.

As to the people, however, in whom the sovereign power resides: from their authority the constitution originates; in their hands it is as clay in the hands of the potter; they have the right to mould, to preserve, to improve, to refine, and to finish it as they please. If so, can it be doubted that they have the right likewise to change it?—*Vol.* 1, *page* 410.

Judge Story, speaking of the declaration of independence, says:

> "It was not an act done by the State governments then organized, nor by persons chosen by them. It was emphatically the act of the whole people of the united colonies, by the instrumentality of their representatives chosen for that among other purposes. It was an act not competent to the State governments, or any of them, as organized under their charters, to adopt. Those charters neither con

templated the case, nor provided for it. It was an act of original inherent sovereignty by the people themselves; resulting from their right to change the form of government and to institute a new goverument whenever necessary for their safety and happiness."—*Story's Com. on the Constitution, vol. 1, page* 198.

Judge Story, commenting on the origin and proceedings of the convention which formed the first general government for the colonies, says:

In some of the legislatures of the colonies, which were then in session, delegates were appointed by the popular, or representative branch; and in other cases they were appointed by conventions of the people in the colonies. The convention of delegates assembled on the 4th of September, 1774; and having chosen officers, they adopted certain fundamental rules for their proceedings.

Thus was organized—under the auspices, and with the consent of the people, acting directly, in their primary, sovereign capacity, and without the intervention of the functionaries, to whom the ordinary powers of government were derived in the colonies—the first general or national government.

The Congress thus assembled exercised, *de facto* and *de jure*, a sovereign authority; not as the delegated agents of the government *de facto* of the colonies, but in virtue of original powers derived from the people.—*Story's Com. on the Constitution, vol* 1, *p.* 185 and 186.

The States of Michigan and Arkansas were admitted into the Union upon the principle asserted by these authorities, thus furnishing a practical recognition of their validity from the date of the declaration of independence to the present time.

My next and last object will be to show the *right* of a majority of a *community* to *establish* a constitution of government. This proposition has been much mystified as a principal point in the controversy; and to disprove its correctness, the *rights* of men in a *state* of *nature*, and the *rights* of men as a *community*, have been confounded as being the same; and in this lies the whole error.

Men may be regarded in three situations: first, in a state of nature; second, as a community or social compact; third, as a political compact or government. In a state of nature each man is *sui paris*, master of himself and no body else; and in this *state* perhaps *one* man would have as good a right to control *two*, as *two* would have to control *one;* and therefore, whilst in this state, the consent of each and all, one with another, becomes necessary to the formation of *a community* or *civil society*, which is the first step towards the formation of *civil government*. In other words, civil society is a necessary intermediate step between a state of nature and a state of civil government. Hence it follows that the contract, by which men pass from a state of nature to a state of civil society is one thing; and the contract, so to speak, by which they pass from a state of civil society to a state of civil government is another.

The dissolution of civil government, therefore, is not the dissolution of civil society; and this was the case in Rhode Island: the government might have been dissolved, and yet the society would exist. It remains to inquire now *whether all*, and if not, *what number of a community*, is necessary to establish civil government.

Let it be premised that a *community*, in the sense named, is both a *unit* and *sovereignty*. These positions stated, it follows that, if it moves at all, it must be in the *direction* of the *greatest number;* if it acts, it must be by the *will* of the *majority*. And it is on this principle, that where the governing power of legislative assemblies is not fixed by the organic law, *the act* of the *majority* is taken for *the act* of the *whole*, as having, by the law of nature and reason, the power of the whole. Hence the majority of a community may change or abolish their constitution of government at their pleasure; and it is on this ground that the "people's constitution" of Rhode Island was rightfully established, and acquired a binding force. Were it otherwise, the idea of free government would be a mere delusion—dazzling in *theory*, but barren in *practice*. This view of the subject is abundantly fortified by the highest authorities both in Europe and America.

Mr. Locke, in his treatise on civil government, (page 271,) says:

If the consent of the majority shall not, in reason, be received *as the act of the whole*, and include *every individual*, nothing but the consent of every individual can make anything to be the act of the whole; but such consent is next to impossible ever to be had, &c.

Mr. Madison, in advocating the adoption of the constitution of the United States, says:

It is essential to such a government (that is, republican) that it be derived from the great body of the society, not from an inconsiderable proportion or a favored class of it; otherwise, a handful of tyrannical nobles, exercising their oppressions by a delegation of their power, might aspire to the rank of republicans, and claim for their government the honorable title of republic.—*Federalist, No.* 39, *p.* 203.

Chief Justice Marshall, of the Supreme Court of the United States, says:

It has been said that the people had already surrendered all their powers to the State sovereignties, and had nothing more to give. But surely the question, whether they may resume and modify the powers granted to government, does not remain to be settled in this country.—*Wheaton's Reports, vol.* 4, *p.* 405.

Mr. Wilson says:

The truth is, that in our government, the supreme, absolute, and uncontrollable power remains in the people. As our constitutions are superior to our legislatures, so the people are superior to our constitutions. Indeed, the superiority in this last instance is much greater, for the people possess, over our constitutions, control in act as well as right.—*Works,* 3 *vol. p.* 292.

Again he says:

Of the right of a *majority* of the whole people *to change* their government *at will*, there is no doubt.—1 *Wilson*, 418.

Again he says:

The *revolution principle*—that sovereign power residing in the people, they may change their *constitution* and government *whenever they please*—is not a principle of *discord, rancor,* or *war;* it is a principle of *melioration, contentment,* and *peace.*—*Wilson, vol.* 1, *p.* 21.

Justice Patterson, of the Supreme Court of the United States, says:

The constitution is the work of the people themselves, in their original, sovereign, and unlimited capacity.

A constitution is the form of government delineated by the mighty hand of the people, is paramount to the will of the legislature, and is liable only to be revoked or altered by those who made it.—2 *Dallas Rep. p.* 304.

Vattell says:

"The best constitution which can be framed, with the most anxious deliberation that can be bestowed upon it, may, in practice, be found imperfect and inadequate to the true interests of society. Alterations and amendments then become desirable. The people retain, the people cannot perhaps divest themselves of, the power to make such alterations. A moral power equal to, and of the same nature with that which made, alone can destroy. The laws of one legislature may be repealed by another legislature, and the power to repeal them cannot be withheld by the power that enacted them. So the people may, on the same principle, at any time, alter or abolish the constitution they have formed." And this has been frequently and peaceably done by several of these States since 1776. If a particular mode of effecting such alterations has been agreed upon, it is most convenient to adhere to it; but it is not exclusively binding.—*Rowle on the Constitution, p.* 17.

Justice Story, of the Supreme Court of the United States, says, in his Commentaries on the Constitution:

The declaration (of independence) puts the doctrine on

the *true ground*—that government derive their powers from the *consent* of the governed. And the people have a right to alter it, &c.—*Page* 300, *vol.* 1.

The same judge also says:

The understanding is general, if not universal, that, having been adopted by a majority of the people, the constitution of the State binds the whole community *proprio vigore:* and is unalterable, unless by the consent of a majority of the people, or at least by the qualified voters of the State, in the manner prescribed by the constitution, or otherwise provided by the majority.

And this, according to Mr. Locke, is the true sense of the original compact, by which every individual has surrendered to the majority of the society, the right permanently to control and direct the operations of the government therein.—*Story's Commentaries, vol.* 1, *p* 305, 6.

But, sir, to crown all, I find the same doctrine expressly recognised in the constitution of Virginia, a State eminently distinguished in the annals of civil liberty. Yes, sir, it is recognised in these emphatic words, being a part of the 3d article of the bill of rights:

That government is or ought to be instituted for the common benefit, protection, and security of the people, nation, or community. And that, when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish in such manner as shall be judged most conducive to the public weal.

This, sir clinches the spike, and leaves no room for escape as regards the right of a majority, whether *with* or *without* the *consent* of *government*, to alter or abolish the constitution of government.

But, sir, since party politics have been drawn into this question, how, let me inquire, do the two parties of this country stand in relation to it?

The gentleman from Indiana [Mr. CALEB B. SMITH] has labored to connect Mr. Van Buren and the democratic party with the efforts of the majority in Rhode Island, to establish what is called "the people's constitution." Be it so. The democracy of the country are in favor of the rights of man; they have felt for the sufferings and abasement of their brethren under the tyrannous rule of a miserable oligarchy. They have seen them submit to evils as long as evils were sufferable; and finally, when they struck for liberty, (by peaceful means to be sure,) they watched the issue with painful anxiety, rejoicing at their success, and mourning over their reverses. And now, since they have fallen martyrs to their noble cause, they neither fear nor hesitate to vindicate their aims, or to defend them against assault. Where do the *whigs* stand? The following preamble and resolution recently adopted by a "Clay club" in the city of Providence, in Rhode Island, will show:

Whereas Henry Clay took a decided stand in defence of the principles of law and order, during the late rebellion in Rhode Island; therefore,

Resolved, That in the judgment of this meeting, the conduct of Mr. Clay upon the Rhode Island question constitutes one of his strongest titles to the confidence and support of Rhode Island men; that we honor the man, who, regardless of all consequences to himself, espoused the cause of regulated liberty in this State; who raised his voice to cheer us onward in the hour of our utmost need; who lent the authority of his great name to the principles for which he contended—principles which are destined never to perish.

We learn from this, not only where the whig party stands in relation to the Rhode Island controversy, but also their views as regards the principles of civil government. We learn that "law and order" consists in the *rule of a minority;* that "rebellion" consists in the effort of a *majority* to establish *free* government; that "regulated liberty" consists in the *submission* of the *many* to the *few;* and that Mr. Clay's espousal of these horrible principles, "constitutes one of his *strongest titles* to the *confidence* of Rhode Island men." A precious confession. It proves what the democrats charge, but what the whigs have denied—what they have denied in public, but admit in private,—that old federalism and modern whigery are one and the same; that the whigs of the present day, as the federalists of 1787, believe that "all communities divide themselves into the *few* and the *many*. The first are the *rich* and *well born*, the other the *mass* of the *people;*" that "the *people* are *turbulent* and *changing; they seldom judge or determine right.* Give, therefore to the *first class* a *distinct, permanent* share in the government."

* * * "Nothing but a permanent body can check the imprudence of democracy. Their turbulent and uncontrolable disposition requires checks."

* * * "It is admitted that you cannot have a good executive upon a democratic plan. See the excellency of the British executive. He is placed above temptation. He can have no distinct interests from the public welfare. Nothing short of such an executive can be efficient."

* * * "Let one body of the legislature be constituted during good behavior or life."

* * * "Let one executive be appointed who dares execute his powers."

* * * "That an executive is less dangerous to the liberties of the people when in office during life, than for seven years."

1. A legislature in two chambers, "*with power to pass all laws whatever*," subject to the *veto.*
2. The House to be chosen for three years.
3. The Senate to serve during good behavior.
4. The executive to serve during good behavior, and to have a negative on all laws about to be passed, the entire direction of war when once begun, the *appointment* of his cabinet officers, and nomination to the Senate of other officers, and the pardoning power.

To appoint the governor of each State, and to have a veto on all the laws of each State.

No State to have any forces, land or naval, and their militia to be under the *sole* and *exclusive* direction of the United States.

These were the doctrines of the federal party, as expressed by Mr. Hamilton, its father and founder, in the convention which framed the constitution of the United States; and such are the views now advanced by the whig party, with Mr. Clay at its head, in relation to the Rhode Island controversy.

Let it be, then, that the democrats and whigs have taken their respective sides on this question. The issue is formed and submitted to the grand inquest of the country: let them pass upon it.

A word to the representatives from the South, and I have done. An appeal has been made to them to array themselves against the investigation proposed. Their opposition is invoked on the ground that it aims a blow at the institutions of slavery in the South. An artifice so shallow can hardly fail to excite their contempt. Where does the South find the supporters of what the constitution guarantees to them? Among the whigs here and elsewhere, who oppose this investigation? or among the democracy, who advocate it? Among the chartists of Rhode Island, who, at one time, denied the right of suffrage to white men, but who now extend it to negroes? or among their opponents, whose constitution extends it to white men, and not to negroes? I leave it for them to decide, and as they decide, I trust they will vote.